PHUA HING LAI & ORS.

v.

TIMBALAN MENTERI HAL EHWAL DALAM NEGERI, MALAYSIA & ORS.

SUPREME COURT, KUALA LUMPUR
HASHIM YEOP SANI CJ (MALAYA)
MOHD. YUSOFF MOHAMED SCJ
GUNN CHIT TUAN SCJ
[CIVIL APPEAL NO. 01-13, 01-14, 01-15, 01-17 OF 1989]
25 NOVEMBER 1989

CRIMINAL PROCEDURE: *Arrest - Whether restriction orders void - Non-compliance with provisions of Enactment - Delay in effecting orders - Whether fatal.*

At various dates all the appellants were arrested by the police pursuant to s. 2(i) of the Restricted Residence Enactment (F.M.S. Cap. 39) and detained in various prisons pending the issue of an order under s. 2(ii) of the Enactment. Subsequently orders under this section were issued in respect of the appellants to the effect that each of them was to reside for a period of three years from the date of the order. All the appellants took out originating summons in the High Court Kuala Lumpur asking for declarations that the restriction orders issued against them were null and void and of no effect in that the respondents did not comply strictly with the provisions of s. 2(ii) of the Enactment in that there was a delay of one or more days from the date of the respective orders before they were served with the orders and taken to the various districts mentioned in the orders. The main point raised was that since the period of three years specified in the orders was to take immediate effect from the date of the orders, a delay even of one or two days would be fatal since the detention in the prison would have become invalid from the date the orders were made.

These delays were explained by DSP Pow Kim Guan to have been caused by the necessary arrangements to get the orders served on the appellants and some difficulties in making arrangements for transportation from the prisons to the various districts of restricted residence.

Held:

[1] Section 3 of the Restricted Residence Enactment provides for the implementation of an order made under s. 2(ii) of the Enactment. Under s. 3(i) there is no time frame given for the implementation of such an order. Since time is not prescribed, then according to s. 38 of the Interpretation and General Clauses Ordinance 1948 which is similar to s. 54(2) of the Interpretation Act 1967 anything which shall be done shall be done with all convenient speed.

[2] However a time frame is provided for by s. 3(ii), imposed by the words "as soon as may be after action has been taken under subsection (i)". The words "as soon as may be" means as nearly as may be reasonable in the circumstances of the case. The various delays as explained by DSP Pow Kim Guan were administrative delays which were not unreasonable under the circumstances.

[Appeal dismissed.]

Cases referred to:

PP v. Koh Yoke Koon [1988] 1 CLJ (Rep) 269
Aminah v. Superintendent of Prison, Pengkalan Chepa [1968] 1 MLJ 92

Legislation referred to:
Interpretation Act 1967, s. 54(2)
Interpretation and General Clauses Ordinance 1948, s. 38
Restricted Residence Enactment (FMS Cap 39), ss. 2(i), (ii), 3, 3(i), (ii)

For the appellants - Karpal Singh; M/s. Karpal Singh & Co
For the respondents - Balia Yusof bin Hj. Wahi; DPP

JUDGMENT

Hashim Yeop Sani CJ:

We considered these appeals together as the main point raised was common to all. The background facts in respect of the appellants were also similar.

At various dates in 1988 all the appellants were arrested by the police pursuant to s. 2(i) of the Restricted Residence Enactment (FMS Cap. 39) and detained in various prisons pending the issue of an order under s. 2(ii) of the Enactment. Subsequently orders under s. 2(ii) of the Enactment were issued in respect of each of the appellants to the effect that each of them was to reside for a period of three years from the date of the order as follows - in respect of Phua Hing Lai, Lai Poh Kim and Tan Lim restricted to Bandaran Kuala Krai in the district of Kuala Krai, Kelantan; and - in respect of Tan Hin Kiang restricted to Bandaran Kota Tinggi in the district of Kota Tinggi, Johor. Action was taken against them based on reports complied by the police for various alleged criminal activities.

All the appellants took out originating summons in the High Court Kuala Lumpur asking for declarations that the restriction orders issued under s. 2(ii) of the Enactment against them were null and void and of no effect.

Their common complaint was that the respondents did not comply strictly with the provisions of s. 2(ii) of the Enactment in that there was a delay of one or more days from the date of the respective orders before they were served with the orders and then taken to the various districts mentioned in the orders. It was not disputed that there was a delay of one day in respect of appellant Tan Hin Kiang, a delay of two days in respect of appellant Lai Poh Kim, a delay of five days in respect of appellant Phua Hing Lai and a delay of six days in respect of appellant Tan Lim before they were taken to their respective districts.

These delays were explained by DSP Pow Kim Guan in his affidavits-in-reply to the originating summons. In respect of all the complaints the delays were caused by the necessary arrangements to get the orders served on the appellants and some difficulties in making the arrangements for transportation from the prisons to the various districts of restricted residence. In other words they were administrative delays.

After considering the affidavits of DSP Pow Kim Guan the learned Judge accepted the explanation for the delays in respect of all the cases.

The main point raised in the Court below as well as before us was that since the period of three years of restricted residence specified in the orders under s. 2(ii) of the Enactment was to take immediate effect from the date of the orders, a delay even of one or two days would be fatal since the detention in the prison would have become invalid from the date the orders were made. All the appellants relied on *PP v. Koh Yoke Koon* [1988] 1 CLJ (Rep) 269.

Under s. 2(i) of the Enactment whenever it shall appear to the Minister on such written information and after such enquiry as he may deem necessary that there are reasonable grounds for believing that any person should be required to reside in any particular district or Mukim, the Minister may issue an order for the arrest and detention of that person. Section 2(ii) of the Enactment then provides that the Minister thereafter after such further enquiry as he may deem necessary may make another order (in Form C in the schedule to the Enactment) that from a date to be stated in the order that person do reside in such district or Mukim as may be specified in the order.

Section 3 of the Enactment provides for the implementation of an order made under s. 2(ii). For convenience the whole of s. 3(i) and 3(ii) are reproduced below:

> 3. (i) When any such order as is referred to in s. 2 subsection (ii) or s. 2A has been made with reference to any person, he shall be taken before the officer-in-charge of the prison in which he is detained and the officer-in-charge shall inform him of the terms of the order and shall deliver to him a copy thereof and shall require him to state, the place in which, consistently with the terms of the order, he desires in the immediate future to reside.
>
> (ii) As soon as may be after action has been taken under subsection (i), the officer-in-charge shall hand over the person to whom the order relates together with a warrant of release in the Form in the Schedule to any police officer appointed by the Chief Police Officer to receive him, and the person shall thereupon be conveyed under police escort to the place wherein he states he wishes to reside and shall there be released.

It can immediately be observed that there is no time frame given in s. 3(i) of the Enactment. Since no time is prescribed then according to s. 38 of the Interpretation and General Clauses Ordinance 1948 (similar provision also found in s. 54(2) of the Interpretation Act 1967), then anything which shall be done shall be done with all convenient speed.

There is however a time frame given by s. 3(ii) of the Enactment imposed by the words "**as soon as may be after action has been taken under subsection(i)**" appearing in that subsection. The words "as soon as may be" means as nearly as may be reasonable in the circumstances of the case. See also *Aminah v. Superintendent of Prison, Pengkalan Chepa* [1968] 1 MLJ 92.

Whoever caused the delay must explain the delay; and it is for the Court to decide whether the delay is reasonable under the circumstances.

The learned Judge correctly distinguished *PP v. Koh Yoke Koon* (*supra*) since the appellants in this case were all under lawful detention prior to being served with the orders under s. 2(ii) of the Enactment. The orders of the Deputy Minister under s. 2(i) of the Enactment also carried the words "sehingga tuan menerima perintah-perintah selanjutnya melalui saya" (until you receive further orders through me).

Since the various delays as explained by DSP Pow Kim Guan were administrative delays which were not unreasonable under the circumstances and accepted by the learned Judge, we did not see how the appellants could succeed in their appeals.

We accordingly dismissed the appeals. After hearing arguments we made no order as to costs here and below and ordered that the deposits should be refunded to the appellants.

Also found at [1990] 1 CLJ 420